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TURKEY: LAW ON LEGITIMACY

Belma Bayar

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TURKEY: LAW ON LEGITIMACY

prepared by Belma Bayar

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TURKEY: LAW ON LEGITIMACY

I. HISTORICAL BACKGROUND

At the end of the thirteenth century, a small tribe of Moslem Turks settled in northwestern Anatolia. In an incredibly short time, they managed to establish the Ottoman Empire and to base the whole system of the Empire on Islamic principles. As Islam is an all-encompassing system, it is not merely limited to ethical rules but governs all aspects of life by laws that its adherents regard as God-given. Because of the divine character of the law, Islamic rulers do not have legislative authority but have the duty to enforce Islamic law in an equitable way.

Thus, Ottoman sultans (rulers) regulated only areas that were not covered exhaustively by Islamic law, and their imperial decrees therefore developed the law in such fields as administrative, military, land, and criminal law. The major portion of the Ottoman legal system remained under purely Islamic principles until legal reforms were initiated by an imperial decree, Gulhane Hatti Sherif, in 1839. The decree promised modernization of the administration and legal system to secure basic human rights for Moslem and non-Moslem subjects alike. Because the decree was not fully implemented, another imperial decree, Hatti-Humayun, was promulgated in 1856, under the pressure of foreign powers, to insure the completion of the reforms as quickly as possible.[1/]

The modernization efforts at first affected commercial, criminal, maritime, criminal procedure, and civil procedure laws, which were codified by

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1/ Coşkun Üçok and Ahmet Mumcu, Türk Hukuk Tarihi 311-316 (1976).

adopting respective French codes with minor changes.[2/] There were no serious objections to the newly enacted codes since these codes regulated only the areas that were either new to Islamic law because of economic changes or technical inventions or were already regulated and developed by imperial decrees, such as criminal law. As for the civil law, conservatives did not allow the reception of a foreign code but agreed on the codification of Islamic rules. The Majalla (the Ottoman Civil Code) was prepared between 1868-1876, and each part was promulgated as soon as it was completed.[3/] Although earnest efforts were made to follow a western codification style, the Majalla failed to cover all civil matters, but regulated mostly the law of obligations and some areas of property and civil procedure.

Family law was left completely outside the scope of the code because at that time, although the need for some changes was great, the revision of the family law seemed to be impossible. Family matters were regulated in detail by religious laws, which were held sacred and had to be followed by every Moslem. However, in 1917, family law was revised in an effort to ameliorate the status of women. This was accomplished within the spirit of Islam. For example, marriage in Islam is a civil contract and the new law interpreted marriage from this particular point of view. Thus, either party could insert into a marriage contract a clause changing the rights of the spouses recognized by Islamic jurisprudence. The new family law stayed in effect only two years, however.[4/]

2/ These adopted codes were codified as follows: the Commercial Code in 1850, the Criminal Code in 1858, the Maritime Code in 1864, the Criminal Procedure Code in 1879, and the Civil Procedure Law in 1880. After the reforms, secular courts existed side by side with the Shari'a courts until the religious courts were abolished in 1924. Bülent Davran and Hüseyin Nail Kubalı, "Turkey," International Encyclopedia of Comparative Law, v. 1: National Reports T-45, T-48 (n.d.).

3/ Supra note 1, at 326.

4/ Id. at 328.

At the end of World War I, the Ottoman Empire was dissolved. After a struggle for independence, the Republic of Turkey was established in 1923. Leaders of the Republic were determined to modernize Turkey in the shortest possible time. Every effort was expended for a comprehensive reform, which could not be accomplished without radical changes in society. If society were to be reformed, the change had to start from its smallest unit, the family. Existing family law, with its strict Islamic principles, was not consistent with the spirit of reform. In 1924, Parliament took up the question. There were serious discussions on whether the abrogated Family Law of 1917 should be restored with or without amendments. The discussions aroused great interest, especially among women. Women's clubs took the initiative and appointed a committee to study the family laws of western countries. The committee found the Swiss law most desirable and sent its translation to Parliament with a petition.[5/] Conservative members of the Parliament opposed the adoption of any western code that would result in a complete break with Islamic law and traditions. Progressive members of Parliament were able to overcome the objections, however, and the Swiss Civil Code of 1917--which was considered the most modern and democratic of the western codes--was adopted in its entirety in 1926.[6/] Furthermore, Criminal, Commercial, Civil Procedure, Criminal Procedure, and Maritime Codes were adopted from various European codes to complete the secularization and westernization of the Turkish legal system.[7/]

5/ Halide Edip, "Woman's Part in Turkey's Progress," 46 Open Court 355 (1932).

6/ Hıfzı Veldet Velidedeoğlu, Türk Medeni Hukuku, 48 (3d rev. ed. 1963).

7/ The Criminal Code was codified in 1926, Commercial Code in 1926, Civil Procedure Code in 1927, Criminal Procedure Code in 1929, and Maritime Code in 1929. Fahri Coker and Sadi Kazancı, eds., 1-4 Türkiye Cumhuriyeti Kanunları, 594, 865, 1004, 1302, 1394 (1972-).

II. THE NEW CIVIL CODE: THE PROBLEM OF RECEPTION

Although the new Civil Code brought drastic changes, as a whole it was well received, and the difficulties encountered in the application of it were overcome by the courts quite effectively, except in the area of family law. The overnight change in the family law, which was meant to break down old traditions and customs to westernize the Turkish family, met with strong resistance in rural areas. Although the Ottoman Empire had westernized most of its laws after 1839, family law was not affected by these reforms. The Family Law of 1917 had attempted to improve the position of women in the family by imposing some restrictions on polygamy and the absolute right of the husband over divorce, but, in practice, the law could not bring about the intended changes. Under the new law, for example, it became illegal for a man to remarry without the consent of his wife. The legislature assumed that acquiring the consent of the wife would be so difficult that this conditional polygamy would in practice mean monogamy. However, the economic, social, and cultural status of the majority of women kept them from resisting their husbands in this regard.[8/] Although the upbringing of women traditionally taught them to be obedient, most of them would have refused to give their consent had it not been so easy for their husbands to divorce them. Only the wealthy and educated women could stand up to their husbands; the rest had to submit to their husbands' wishes under threat of divorce and its humiliating results.

Thus, when the Civil Code was adopted in 1926, the family law up to this time had not been touched by reforms like the other areas of law. Still, marriage and divorce were considered private matters, and marriage remained a civil contract. If the parties declared their intentions by offer and acceptance in the presence of

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8/ Zeki F. Fındıkoğlu, "A Turkish Sociologist's View," 9 International Social Science Bulletin 20 (1957).

two witnesses, they were united in marriage. Legally, no further formalities were needed. However, in Turkey, performance of the marriage ceremony by an imam[9/] became a well-established custom, although the validity of the marriage did not depend on his presence.[10/] There were no age limits for men and women if the fathers or guardians gave their consent. The divorce procedure was as easy as that for marrying because the marriage contract could be unilaterally terminated by the husband, whose mere declaration of intent was sufficient to change the marital status. Islamic law also allowed a man to have as many as four wives, and polygamy was a common practice, especially in rural areas.[11/] Consequently, the reforms imposed by the Civil Code were not only drastic but sudden. Monogamy, the civil marriage ceremony, and divorce laws clashed with religious beliefs and customs. The Turkish people had been accustomed to these uncomplicated marriages with no age restrictions and to easy divorces. Men had enjoyed a privileged status in the family and had known polygamy for centuries. New rules that were aimed at altering the social order by turning away from Islamic law were resisted, especially by conservative and illiterate people in the rural areas.

The majority of villagers continued to marry with only a religious ceremony,[12/] although legally such marriages were null and void. Consequently, millions of children were born out of wedlock. The provisions of the Civil Code were not adequate to legitimize or even to acknowledge most of these children. Thus, the

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9/ Here, imam means the prayer leader of a mosque.

10/ Supreme Court Decision No. 65/3 of June 14, 1965 in T.C. Resmi Gazete [Official Gazette of the Republic of Turkey, hereafter TUR OG], No. 12069 of June 17, 1965, p. 12.

11/ Feyzi N. Feyzioğlu, "Cumhuriyetin 50. Yıldönümünde 'Medeni Nikâh,'" 50. Yıl Armağanı 233-290 (1973).

12/ Paul Stirling, "Land, Marriage and the Law in Turkish Villages," supra note 8, at 29.

legislature was forced to make special laws to deal with this situation, and these have been in force side by side with the Civil Code. To understand the underlying reasons for this dual system and its survival for half a century, articles of the Civil Code pertaining not only to legitimation, acknowledgment, and adoption but also to marriage and divorce must be studied and compared with Islamic law and traditions, as well as the difficulties encountered by those who wanted to follow the new rules.

III. MARRIAGE AND DIVORCE LAWS OF THE CIVIL CODE[13/]

Although Islamic law regulated the family law in detail, still some areas were left to the discretion of individuals; marriage age was one of them. The new Code brought strict rules in this respect by prohibiting the marriage of a man under eighteen and a woman under seventeen. Only a judge in exceptional cases could permit a man or a woman to marry as early as at the age of fifteen.[14/]

Many young men and women did not want to wait until they were of marriageable age. They chose either to marry in a religious ceremony or to apply to the courts for the correction of their birth registers, claiming, falsely in most cases, that their birth dates had been recorded incorrectly.[15/] Only in rare cases did a few of them request the permission of the judge because it was easier to prove that the birth records were incorrect than to come up with that

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13/ Law No. 743 of October 4, 1926, TUR OG, No. 339 (April 4, 1926), p. 15-239.

14/ Art. 88. (All footnote references to articles refer to the Civil Code, unless otherwise noted.)

15/ In Turkey, a large number of births are not registered promptly because of the negligence of the parents. However, in rural areas some parents intentionally used to report the births of their sons five or ten years later as if they were just born "with the purpose of postponing military service and evading the road tax" (Herbert J. Liebesny, The Law of the Near and Middle East: Readings, Cases and Materials 168 (1975)).

very important reason required by law for the special permission. Friends and relatives willingly lied under oath and did not consider their acts as perjury, but as good deeds. Correction cases flooded the courts to such a degree that other types of cases were delayed. Because of the increasing number of illicit unions and the backlog in the courts, the legislature amended article 88 in 1938 by lowering the marriage age to seventeen for men and fifteen for women, and enabling a judge to permit a man to marry at fifteen and a woman at fourteen for a valid reason.[16/] Lowering the legal marriage age has helped to decrease court loads but has not put an end to birth register correction cases entirely, for two reasons. Some birth dates have knowingly been registered incorrectly, and in rural areas the legal marriage age is considered still too high because some parents, under Islamic law, used to marry their children even before puberty.

However, the majority did not go to courts for permission to marry or for correction of their birth registers, but married in a religious ceremony, despite the fact that the performance of a religous ceremony before the civil one is forbidden by law.[17/] Although article 237 of the Criminal Code[18/] punishes with a fine and imprisonment those who perform a religious marriage ceremony without seeing the certificate indicating that the parties have been married lawfully, imams do perform religious ceremonies without asking to see the couples' civil marriage certificates. Efforts to persecute imams were completely unsuccessful because of the difficulty of finding witnesses who would testify against them.

16/ Law No. 3453 of June 15, 1938, TUR OG, No. 3945 (June 28, 1938), p. 10112.

17/ Art. 110.

18/ Law No. 765 of March 1, 1926, TUR OG, No. 320 (March 13, 1926), p. 1065-1154.

Many individuals who reach the legal marriage age still choose to be married by religious ceremony only because of the difficulty of getting a marriage license and not from a desire to follow old traditions. According to articles 97 and 98 of the Civil Code, application for a license must be made at the residence of the man to the mayor or his appointed officer in the cities, and to a muhtar[19] in the villages. A man and a woman may declare their intention to marry either orally or in writing, in which case signatures must be authenticated. Applicants must submit their birth certificates;[20] if they are under eighteen years of age, the permission of their parents or guardian is also required. In cases of remarriage, either the death certificate of the former spouse or the divorce or nullity judgment of the court must be presented because law forbids remarriage without proof that any previous marriage has been legally dissolved.[21] When all documents are submitted, the marriage banns are publicized for fifteen days. Publication must be made at the residence and place of birth registry of both parties. Only after the publication period elapses without any objection to the marriage, can the parties be married or issued a marriage license which authorizes them to marry within six months in any part of Turkey. In case of the illness of one of the parties which could endanger the performance of the ceremony if the publication period is observed, a judge may permit this period to be shortened or omitted completely.[22]

19/ A muhtar is the head of a village and its council of elders. Although it is the council of elders in article 97, a Supreme Court Decision holds the muhtar responsible for accepting and processing marriage applications. Supreme Court Decision No. 3/13 of June 17, 1965, supra note 11, at 258.

20/ Many people in rural areas do not have birth certificates because their births have never been registered, nor have the births of their parents. Consequently, it may become necessary to register their parents' and even grandparents' births before they can get their birth certificates, supra note 15, at 168.

21/ Art. 94.

22/ Art. 107.

These formalities are further complicated by marriage regulations[23] as called for under article 111, which require that birth certificates be verified by the birth registrar's office. If the applicant's birth is registered in another city, it takes months, if not years, to get a verification.[24] There are not enough personnel and the backlog is enormous. Also, the Marriage Physical Examination Regulation requires a government physician's certificate showing that the applicants do not have any contagious diseases,[25] but there are no doctors in most villages. In the eastern part of Turkey, because roads are poor and winters are severe, villagers do not dare travel during this period. Even when weather permits, it may take hours to reach a doctor. Since for many young people such a trip would be their first trip to the city, it can be a tiring, expensive, and frustrating experience which makes a religious marriage a desirable alternative to avoid the delay, expense, and confusion.

If a person has been married once, he/she cannot remarry without getting an annulment or a divorce. A suit to annul a marriage may be brought by the Attorney General or by anyone with an interest in the matter if on the date of marriage one of the spouses is already married, is insane, or is within the prohibited degree of relationship by blood or marriage[26] to the would-be spouse. If a minor has married without the consent of his/her parents or guardian, a suit for annulment may be brought by one of the parents or the guardian of the minor. However, if he/she becomes of age or the wife becomes

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23/ Ferit H. Saymen, 1 Türk Medeni Hukuku 51 (3d rev. ed. 1960).

24/ Supra note 10, at 289.

25/ Evlenme Muayenesi Hakkinda Tüzük, Decree No.11628 of August 17, 1931, TUR OG, No. 1904 (September 21, 1931), p. 819.

26/ Arts. 112-113.

pregnant, the marriage cannot be annuled.[27] A spouse may also ask for annulment if he/she has married because of a grave mistake, fraud, or duress. However, suit for annulment must be brought within six months from the date of discovery of the existence of the ground for annulment or from the termination of the duress, and in every case, within five years from the date of marriage.[28]

As for divorce, there are only six grounds. Adultery is one of them,[29] but it is rather difficult to prove and, if there are children, the husband will be very hesitant to charge his wife with adultery because he would be hurting the reputations of his children as well as of his wife. An attempt on the life of one's spouse or extreme cruelty is another ground for divorce.[30] If the husband or wife has committed an infamous crime or has acted so dishonorably that the couple's mutual life has become intolerable, the other spouse may sue for divorce.[31] In the case of mental illness, if after three years experts have pronounced a spouse's mental disease incurable, the other party may ask for divorce if their mutual life has become intolerable.[32] Desertion is another ground for divorce if a spouse, without just cause, leaves home and does not want to return. To be able to file for divorce based on this ground, at least three months must elapse from the time the spouse leaves the mutual home. If the absent spouse does not return within a month or show just cause for staying away in spite of a warning by the judge, divorce

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27/ Art. 120.

28/ Arts. 123-127.

29/ Art. 129.

30/ Art. 130.

31/ Art. 131.

32/ Art. 133.

may be granted.[33/] Article 134 of the Code gives a more general ground for divorce, incompatibility, and describes the conditions of it. Thus, only if the marital relationship has been damaged so severely that continuation of the marriage is intolerable for the spouses may either of them sue for divorce. However, if the disturbance is caused primarily by one spouse, only the other may sue for divorce. In practice, other grounds are rarely used. Most of the time divorce cases are based on incompatibility, which might have been created by one of the above grounds.

Furthermore, whatever the grounds may be, the judge must not accept any fact on which the divorce case is based without being convinced that it took place as claimed. Even the admittance of such facts, however, does not bind the judge's discretion to evaluate the evidence, and the judge cannot accept testimony from either husband or wife.[34/] Since acceptance of the facts by the parties alone is not enough to convince judges--even when both husband and wife mutually want a divorce--the parties must find witnesses. Finding willing witnesses is usually very difficult. People who know the facts are relatives and friends of the family. Often they do not want to take sides or help the parties obtain a divorce because most of them consider it the most unfortunate thing that can happen to a family. Even when subpoenaed to court, many witnesses prefer to remain silent rather than testify.

On the other hand, judges are inclined to make divorces difficult because there are no alimony provisions for the husband or wife except in cases in which the innocent party becomes destitute. Even then, support may be given only for one year.[35/] In Turkey, still, a majority of wives have never worked. After the

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33/ Art. 132.

34/ Art. 150.

35/ Art. 144.

divorce, most of them do not have any way of supporting themselves. They have neither the education nor the experience to get a job. Consequently, wives are usually the ones who suffer the most by the divorce. When possible, judges like to grant separation rather than divorce, so an innocent wife is provided for. Although after the divorce ground has been proven, a judge cannot grant divorce if only a separation is sought, he can grant separation if a divorce is sought when reconciliation between husband and wife is deemed probable.[36/] Separation can be granted from one to three years. At the expiration of the separation period, if the husband and the wife have not been reconciled, either one of them may ask for a divorce, but it cannot be granted if the plaintiff is solely responsible for the grounds of separation.[37/]

When a divorce is granted, a judge may restrain the guilty party from remarrying for at least one year or at the most three years.[38/] However, regardless of guilt, a woman must wait three hundred days after her divorce, unless a child is born in this period. The delay can be shortened by the court only if the possibility of the birth of a child from the former marriage is excluded or when a divorced couple remarries.[39/] Instead of getting involved in costly and long divorce cases and waiting periods, some separated couples merely go their own ways. If they want to marry, they do so in a religious ceremony instead of a civil one.

36/ Art. 138.

37/ Arts. 139-140.

38/ Art. 142.

39/ Art. 95.

Against the background of established beliefs and customs of the people, all these restrictions imposed by the law have helped the institution of religious marriage survive up to the present. From the legal point of view, these marriages do not exist and in most cases, under the provisions of the Civil Code, children born from such illicit unions cannot be registered as legitimate.

IV. LEGITIMACY LAWS OF THE CIVIL CODE

Article 241 of the Code creates the presumption that an offspring of a married couple is legitimate and the husband is the father of the child if he/she is born during the marriage or within three hundred days after the termination of the marriage. Furthermore, the husband cannot disown a child born within one hundred and eighty days after the marriage unless he can prove that he could not have been the father.[40/] However, if the child is born within one hundred and eighty days from the date of marriage, the husband does not have to bring any evidence in support of his suit.[41/] A disavowal suit has to be brought against the child and the mother within one month from the date of the knowledge of the child's birth.[42/] If the father dies within one month from the date of his knowledge of the child's birth, his heirs can bring the disavowal suit within the time allowed to him.[43/]

V. LEGITIMATION LAWS OF THE CIVIL CODE

The Code recognizes only two ways to legitimize a child who is born out of wedlock. If the parents subsequently marry, the child becomes legitimate by

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40/ Art. 243.

41/ Art. 244.

42/ Art. 242.

43/ Art. 245.

law.[44] Although the parents are required to register a child born before the marriage ceremony at their residence or their place of marriage, the absence of such registration does not affect the legitimacy of the child.[45] In cases in which a promise of marriage has existed and the marriage of the parents has been prevented by the death or incapacity of one of them, the other party or the child may apply to the court for a legitimation decree.[46] If the promise of marriage is proven, the court notifies the birth registrar's office of the legitimation.[47] According to the Civil Code, only in the above two cases may a child born out of wedlock enjoy the same legal status as a legitimate child in respect to both parents. Otherwise, the child has legitimate status by birth only in respect to the mother.[48]

VI. ACKNOWLEDGMENT LAWS OF THE CIVIL CODE

When conditions do not permit the legitimation of a child, the father may acknowledge the child, unless the child is born of an adulterous or incestuous union.[49] Acknowledgment must be made by an authenticated document. If the father dies or becomes mentally disabled before acknowledgment, the paternal grandfather can acknowledge the child. The acknowledgment must be registered at the child's birth registration office.[50] The mother, child, or his descendants can oppose the acknowledgment within three months of their obtaining knowledge of

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44/ Art. 247.

45/ Art. 248.

46/ Art. 249.

47/ Art. 250.

48/ Art. 290.

49/ Art. 292.

50/ Art. 291.

it, claiming the father or grandfather acknowledged the child falsely or that acknowledgment will be harmful to the child. In such cases, the registrar must notify the party concerned of this opposing claim. The party may bring action in court to establish that the opposing claim has no grounds.[51/] Interested third parties also may oppose acknowledgment by bringing a court action in the place of registry. They must prove either that the person who has acknowledged the child is not the father or grandfather, or that the acknowledgment is against the law.[52/]

Voluntary acknowledgment by the father gives the illegitimate child almost the same legal rights against his/her father as the legitimate child. The acknowledged child takes his father's name and nationality, must be supported by him, and has inheritance rights. However, the illegitimate child can inherit only one half as much as the legitimate child does, unless the father has no other children, in which case an illegitimate child can inherit the full share.[53/]

VII. PATERNITY LAWS OF THE CIVIL CODE

If the father is unwilling to acknowledge his child, the mother or the child may ask the court to establish paternity. The action may be brought against the father or his heirs during pregnancy or within one year from the date of birth.[54/] Claim may be made only for maintenance of the mother and the child, unless certain conditions exist.[55/] Thus, if the defendant has promised to marry the mother, or his cohabitation constitutes a criminal offense against her, or there was an abuse of his power over her, establishment of paternity with its full consequent status may

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51/ Art. 293.

52/ Art. 294.

53/ Arts. 312, 443.

54/ Arts. 295-296.

55/ Art. 297.

be claimed, by which the child may enjoy the same rights against his father as the acknowledged child. However, if the father was married at the time of cohabitation, paternity cannot be established even by a court.[56/]

VIII. ADOPTION LAWS OF THE CIVIL CODE

Adoption may be a very desirable solution for a father who wants to give his child legitimate status but is unable to do so because he does not want to marry the mother or he is already married. However, only a few of the fathers can adopt their illegitimate children because of the restrictive rules of the Code. The law not only requires the adopting parent to be at least forty years old and eighteen years older than the child, but also requires that he not have any legitimate children and have the consent of his wife, if he is married.[57/] Consequently, if the father of the illegitimate child already has legitimate children, he cannot adopt and thus legitimize his offspring born out of wedlock.

IX. SPECIAL LEGITIMATION LAWS

Within a few years of the adoption of the Code, the increasing number of illegitimate children became such a problem that the legislature had to find a solution. Amendment of the Civil Code was considered but not accepted because it would have run counter to the spirit of reform. It was also hoped that as the people were educated and the administrative difficulties were overcome, more and more couples would opt for civil marriage. On the tenth anniversary of the Republic,

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56/ Art. 310. However, in a recent case when a paternity suit was rejected based on the second paragraph of art. 310, the plaintiff claimed that it was unconstitutional to deny the right to sue for paternity just because the child was born of an adulterous union, and the Constitutional Court held the second paragraph of art. 310 unconstitutional. Constitutional Court Decision No. 1981/22 of May 21, 1981 in TUR OG, No. 17432 (August 18, 1981), p. 29-45.

57/ Arts. 253, 255.

when a general amnesty law was passed,[58] the legislature took the opportunity to correct the legal status of the illegitimate children and marital status of their parents. Article 16 of the law allowed a single man and a woman who were living together to register as husband and wife if they had children, without going through the formalities of the civil ceremony, and their children were registered as legitimate. If a man was already married, such an illicit union could not be registered as a marriage, but their children had to be registered as legitimate children with full legal relations to the father. Only children born before or within three hundred days after the promulgation of the law could be legitimated. The law was to be in force for one year, but if the children who could have benefited from the law were not registered by their parents, they were able to register themselves as legitimate when they became of age.

Approximately twenty-five percent of the population benefited from the law by registering their marriages and children.[59] A social fact of such magnitude could not be overlooked. There was much pressure for the amendment of the articles pertaining to marriage, divorce, establishment of paternity, and inheritance, but only one, the article to lower the marriage age, was changed, in 1938. By 1941, the number of illegal unions and illegitimate children as well as the undesirable practices caused by the impossible situation were of great public concern. For example, in remote mountain villages the births of some children were never reported. They grew up, married in a religious ceremony, lived a normal life, and died without ever having been registered. In some cases in which

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58/ Law No. 2330 of October 26, 1933, TUR OG, No. 2540 (October 23, 1933), p. 3184.

59/ Ali N. İnan, ed., Fiili Birleşmelerle Bunlardan Doğan Çocukların Tesciline Dair Kanun, Yönetmenlik ve Sözleşmeler 8 (1965).

the father was married to more than one wife, one in a civil and the other in a religious ceremony, all the children were registered as if their mother were the legal wife.[60] Aside from the confusion caused in the birth registers, many problems arose from these falsifications. Children could not inherit from their real mother, and they became legal heirs to their stepmothers, whose children opposed giving any part of their inheritance to their half brothers, very violently in most cases. Inheritance laws of the Code made matters even worse because testors may freely assign only one fourth of their estates.[61] The Department of Justice, in a countrywide survey, asked the opinions of governors, prosecutors, and judges on the best solution to this social problem. From the results, a report[62] was prepared and sent to bar associations, law schools, and prominent professors throughout Turkey for their suggestions. A great majority of them seemed to agree that marriage and divorce should be made easier, and that all children born out of wedlock, regardless of the marital status of their parents, should be given the chance to be acknowledged by them. Furthermore, inheritance laws should be amended to give equal shares to illegitimate offspring. In spite of all advice to the contrary, the legislature was unwilling to amend the Civil Code because it would eliminate the desired influence of the Code to discourage polygamous marriages. Instead, in 1945, a special law[63] was passed to correct the status of the illegitimate children and the marital status of their parents with the hope that the need for such a law would not arise again.

60/ Hıfzı V. Velidedeoğlu, Hayat Hukuk ve Cemiyet 90 (1944).

61/ Art. 453.

62/ Adliye Vekaleti Hukuk İşleri Umum Müdürlüğü, "Kanun Dışı Birleşmeler ve Nesebi Sahih Olmıyan Çocuklar Hakkında Rapor," 33:2 Adliye Ceridesi 1327-1373 (1942).

63/ Law No. 4727 of April 30, 1945, TUR OG, No. 6000 (May 8, 1945), p. 8613.

However, the government's earnest efforts to improve the roads, build schools, provide adequate qualified personnel to staff the birth registrar's offices, extend health services to the villagers, and especially to educate the people to the point at which they would be able to understand and follow the formalities of the civil marriage ceremony could be accomplished neither within the five years the law was in force nor in the next twenty years. Consequently, the need for another special legitimation law was felt as soon as the old one expired. In 1950, 1956, and 1965, similar laws had to be passed.[64/] Each time the bills for these special laws came to the Parliament, there was opposition from more than a few members. When the 1965 law was passed, a majority recommended that a permanent solution be found to the problem of illegitimate children. Some pointed out that since the reception of the Civil Code, four special legitimation laws had been passed; by the 1933 law, 3,227,318 children were legitimized, 1,183,07 by the 1945 law, 1,443,374 by the 1950 law, and 1,870,530 by the 1956 law, which showed that the rules of the Code pertaining to paternity and inheritance did not discourage enough religious marriages.[65/] In fact, in their opinion, special laws encouraged some of the unions without a civil ceremony because people knew they could legalize their religious marriages--without going through the difficult and expensive procedures of the civil ceremony--by another of these special laws. Putting an end to the dual system--by amending the Civil Code to simplify the civil marriage ceremony

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64/ Law No. 5524 of February 7, 1950, TUR OG, No. 7426 (February 7, 1950), p. 17726; Law No. 6652 of January 30, 1956, TUR OG No. 9227 (Februrary 7, 1956), p. 13514; Law No. 554 of March 29, 1965, TUR OG, No. 11974 (April 3, 1965), p. 1.

65/ Supra note 59, at 111-116.

and giving a married man a chance to acknowledge his illegitimate children and to recognize their equal inheritance rights--would not only discourage illegal unions (because there would be no hope of legalizing such marriages by new special laws) but would also give a chance to those who wanted to get married in a civil ceremony but did not have the means to do so under the existing laws. Consequently, there would be fewer illegitimate children to be acknowledged under the amended rules of the Civil Code, and those few would have equal rights with legitimate children.

In 1967, the Department of Justice formed a committee to work on the amendments of the Civil Code. The draft took its final form in 1971.[66/] However, the bill was not brought to Parliament because none of the political parties would be responsible for taking action against the Turkish reforms. Instead, in 1974, another special law was passed to be in force for five years.[67/] By this time, civil marriage was widely accepted in most parts of Turkey, yet in some villages the practice of resorting solely to religious marriage ceremonies still lingered. However, the number of children born to such marriages was great enough to require passage of yet another legitimation law in 1981.[68/] Since all these special laws have the same kinds of provisions, the following analysis of the law of 1981 applies in general to the preceding laws as well.

Article 3 of the law of 1981, requires children who were born between October 10, 1926, and the promulgation date of the law to be registered as

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66/ Turgut Akintürk, "Türk Medeni Kanunun Evlilik Hukukuna ilişkin Hükümlerinde Yapılması Öngörülen Değişiklikler," 29 Ankara Universitesi Hukuk Fakültesi Dergisi 34 (1972).

67/ Law No. 1826 of June 20, 1974, TUR OG, No. 14929 (June 28, 1974), p. 1.

68/ Law No. 2526 of September 18, 1981, TUR OG, No. 17466 (September 22, 1981), p. 2-4.

legitimate children if their parents have cohabited. This law also allows the parents to register as husband and wife without going through a civil marriage ceremony if they are single. However, if a married man is living with another woman, their union cannot be registered as a marriage but their children shall be registered as legitimate, even if one or both parents have died. Furthermore, the offspring of the man and woman who have cohabited but are not living together any longer because of separation or death will be registered as legitimate children. In all of the above cases, children are recorded with both parents' names on the same page where the father is registered.

A child born to a woman who at the time of conception was married but cohabiting with another man may be legitimated under this law if the mother becomes divorced and the child is declared illegitimate in that divorce decree.[69/]

Also, the children who are born within three hundred days from the promulgation date of the law, but whose parents have previously cohabited, shall be registered as legitimate children, and the parents may be registered as husband and wife if they are single.[70/]

Interested parties must apply to the Governor's office for the registration of the children. Application has to be certified by the muhtar of the parties' village or district. If one of the parents is deceased, his/her heirs are to be notified of the registration application. If the heirs cannot be found, notification is to be publicized for thirty days at their residence and at the

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69/ Law No. 2526, id., art. 4.

70/ Id., art. 5.

mayor's and registrar's offices. If there are no objections within thirty days, the registration is carried out. However, if there is an objection, the registration office must wait for a court decision and act accordingly.[71/]

Within two years from the promulgation of this law, if the parents do not correct the legal status of their children who should benefit from this law, muhtars are required to register such children. Furthermore, governors are responsible to conduct searches in towns and villages to uncover such children and to process their registrations. All the formalities required for registration by article 6 must be observed.[72/] The right does exist of the interested parties to bring action according to the general rules against registrations made under this law, and the law will be in force five years from the day of promulgation.[73/]

Although the law of 1981 is in essence much the same as the six previous special laws, a law enacted just three months before it shows that the military government intends it to be the last of its kind. This law[74/] requires the Justice Department to form a committee to work on the amendments of the Civil Code. Furthermore, it limits the period to two years for the completion of the draft.

In the meantime, the second paragraph of article 310, that forbids a judge to decree paternity if the father is married at the time of cohabitation, was found unconstitutional by the Turkish Constitutional Court.[75/] In the Court's opionion, the right of a child to his father's name, nationality, and inheritance are basic human rights under the protection of Article 10 of the Constitution.

71/ Law No. 2526, id., arts. 6-7.

72/ Id., arts. 8-9.

73/ Id., arts. 12, 17.

74/ Law No. 24367 of June 7, 1981, TUR OG, No. 17359 (June 3, 1981), p. 1.

75/ Supra note 56.

Furthermore, the contested paragraph upsets the equality principle of the Constitution as well as its explicit requirement of the equal protection of children. In view of the Court's opinion, the writer presumes that if the articles of the Civil Code pertaining to illegitimate children are not amended in the near future, as the cases arise, the articles that do not allow illegitimate children the same rights as legitimate ones will be held unconstitutional. Thus, Turkish laws will conform with the standard for human rights of the United Nations which, in the Courts' opinion, is one of the requirements of the Turkish Constitution.

X. BIBLIOGRAPHY

English-language sources on the specific topic of Turkish legitimation law are scarce. Some of the following entries, therefore, are of a general nature and have only limited material on the subject.

Books

Akıntürk, Turgut. Aile hukuk. 2d rev. ed. Ankara, Sevinç Matbaası, 1975. 460 p.
See particularly p. 51-99, 161-349. LAW Tur 7 AKIN 1975

Aksoy, Muammer. Kötü durumlu evlilik dışı çocuklar. Ankara, Başvekalet Devlet Matbaası, 1943. 211 p. LAW Tur 7 AKSO 1943

Ansay, Tuğrul. American-Turkish private international law. Dobbs Ferry, N.Y., Oceana Publications, 1966. 105 p.
See particularly p. 48-52. LAW Tur 7 ANSA 1966

Arsebuk, Esat. Medeni hukuk. v. 2. Ankara, Recep Ulusoğlu Basımevi, 1940. 444 p. LAW Tur 7 ARSE 1940

Berki, Şakir. Alman, Isviçre ve Türk medeni Kanunlarında evlilik dışı doğan çocuklar. Ankara, Yargıçoğlu Matbaası, 1962. 157 p. LAW Tur 7 BERK 1962

Birsen, Kemaleddin. Medeni hukuk dersleri; ... 6th ed. Istanbul, Fakülteler Matbaası, 486 p.
See particularly p. 213-327. LAW Tur 7 BIRS 1966

Çokar, Fahri and Sadi Kazancı, eds. Türkiye Cumhuriyeti kanunları. Ankara, Ayyıldız Matbaası, A.Ş. 1972- . 8 v.
See particularly v. 1 and 2. LAW Tur 2 1972-

Feyzioğlu, Feyzi N. Aile hukuku dersleri. Istanbul, Fakülteler Matbaası, 1971. 570 p.
See particularly p. 157-424. LAW Tur 7 FEYZ 1971

Göktürk, Hüseyin A. Aile hukuku. v. 2. Ankara, Recep Ulusoğlu Basımevi, 1943. 277 p. LAW Tur 7 GÖKT 1942-43

İnan, Ali N., ed. Fiili birleşmelerle bunlardan doğan çocukların tesciline dair kanun, yönetmenlik ve sözleşmeler. Ankara, Ankara Üniversitesi Basımevi, 1965. 195 p. LAW Tur 7 INAN 1965

Köprülü, Bülent. Medeni hukuk. Istanbul, Fakülteler Matbaası, 1970-71. 753 p.
See particularly p. 488-616. LAW Tur 7 KOPR 1970-71

Lewis, Bernard. The emergence of modern Turkey. 2d ed. London, Oxford University Press, 1968. 524 p.
See particularly p. 109-120, 271-274. DR583.L48

Liebesny, Herbert J. The law of the Near and Middle East: Readings, cases, and materials. Albany, State University Press, 1975. 316 p.
See particularly p. 47-85, 165-171. LAW NEG 7 LIEB 1975

Oğuzman, Kemal and Aybay Aydın. Medeni hukuk pratik calışmaları. 2d rev. ed. Istanbul, Fakülteler Matbaası, 1970. 173 p. LAW Tur 7 OGUZ 1970

Saymen, Ferit H. Türk medeni hukuku. 3d rev. ed. Istanbul, Ismail Akgün Matbaası, 1960. v. 1. 384 p. LAW Tur 7 SAYM 1960

Schwarz, Andreas B. Aile hukuku. 2d rev. ed. Istanbul, Ismail Akgün Matbaası, 1946. 240 p. LAW Tur 7 SCHW 1946

Tekinay, Selahattin S. Türk aile hukuku. 2d ed. Istanbul, Fakülteler Matbaası, 1971. 550 p. LAW Tur 7 TEKI 1971

Uçok, Coşkum and Ahmet Mumcu. Türk hukuk tarihi. Ankara, Sevinç Matbaası, 1976. 371 p. LAW Tur 7 UCOK 1976

Velidedeoğlu, Hıfzı V. Hayat hukuk ve cemiyet. Istanbul, Nebioğlu Yayinevi, 1944. 228 p. LAW Tur 7 VELI 1944

----- Türk medeni hukuku. 3d rev. ed. Istanbul, Nurkök Matbaası, 1963. 864 p. LAW Tur 7 VELI 1963

Articles

Adliye Vekaleti. Hukuk işleri Umum Müdürlüğü, "Kanun dışı birleşmeler ve nesebi sahih olmıyan çocuklar. 33:2 Adliye Cerideşi 1327-1373 (1942). LAW Per

Akıntürk, Turgut. Türk medeni kanunun evlilik hukukuna ilişkin hükümlerinde yapılması öngörülen değişiklikler. 29 Ankara Universitesi Hukuk Fakültesi dergisi 31-58 (1972). LAW Per

Aybay, Aydın. Evlilik dışında doğan çocukların sorunu. Ankara Barosu dergisi 461-467 (1969). LAW Per

Aydınlıyım, Suat. Gayri sahih nesepten doğan kanun ihtilafları. 60:2 Adalet dergisi 633-648 (1969). LAW Per

Ayiter, Nurşin. Bir yargıtay genel kurulu kararı münasebetile. Ankara Barosu dergisi 217-226 (1966). LAW Per

----- Medeni Kanunun nesebe ilişkin düzenlemesinin yeni eğilim ve gereksimeler karşısında değerlendirilmesi. In Ankara Universitesi Hukuk Fakültesi. Medeni Kanunun 50. Yılı. Ankara, Sevinç Matbaası 43-81 (1977). LAW Tur 7 MEDE 1977

Belgesay Mustafa R. Tescil edilmiyen birleşmelerle bunlardan doğan çocukların cezasız tescili hakkında kanunun tahlili. 24 Istanbul Universitesi Hukuk Fakültesi Mecmuasi 363-387 (1959). LAW Per

Berki, Sakir. Evlilik dışında doğan çocukların ana ve babalarına karşı durumları. 27 Ankara Universitesi Hukuk Fakültesi dergisi 93-102 (1970). LAW Per

----- Türk Medeni kanununda zina ve fücur mahsulü çocukların tanınması ve neseplerinin tashihi. 28 Ankara Üniversitesi Hukuk Fakültesi dergisi 301-307 (1971). LAW Per

Brinton, Jasper Y. Turkey's new system of laws and courts. 25 Current history 498-503 (1926-27). D410.C8

Davran, Bülent and Huseyin Nail Kubali. Turkey. International Encyclopedia of Comparative Law v. 1. National Reports T-45, T-48 (n.d.). LAW Gen I.E.C.L.1.T.

Edip, Halide. Woman's part in Turkey's progress. 46 Open court 343-360 (1932). AP2.Q495

Erkuyumcu, Müfit. Nesebi sahih ve gayri sahih çocuklar. 42 Adalet dergisi 863-867 (1951). LAW Per

Feroze, Muhammed Rashid. Family Laws of the Turkish Republic. 1 Islamic studies 131-149 (1962). BP1.I72

Feyzioğlu, Feyzi N. Cumhuriyetin 50. Yıldönümünde 'Medeni Nikâh.' In Istanbul Üniversitesi Hukuk Fakültesi. 50. Yıl armağanı. Istanbul, Fakülteler Matbaası Matbaasi 233-290 (1973). LAW Tur 7 IUHF 1973

Fındıkoğlu, Zeki F. Changes in law and technology in Turkey. 16-17 Annales de la Faculté de droit d'Istanbul 30-40 (1961). LAW Per

----- Special aspects of the Turkish reception of law. 6 Annales de la Faculté de droit d'Istanbul 155-165 (1956). LAW Per

----- A Turkish sociologist's view. 9 International social science bulletin 13-20 (1957). H1.A2

Gürbüz, Yaşar. Family law. In Introduction to Turkish law. Edited by T. Ansay and D. Wallace. Ankara, Güzel Istanbul Matbaası 115-129 (1966). LAW Tur 7 ANSA 1966

Kubalı, H.N. Modernization and secularization as determining factors in reception in Turkey. 9 International social science bulletin 65-69 (1957). H1.A2

Önder, Akil. 2330 Sayılı af Kanunundan bilistifade yapılan evlenme tescillerinin muteber bulunmadığına dair temyiz kararı hakkında. 32:2 Adliye ceridesi 761-763 (1941). LAW Per

Ozenli, Sosyal. Medeni yasa gereğince nesebi red davası. 57:1 Adalet dergisi 400-419 (1966). LAW Per

Redden, Kenneth, Turhan Esener and Neriman Seymen. Legal devices to promote marriage stability in Turkey. 8-9 Revista del instituto de derecho comparado 674-682 (1957). LAW Per

Starr, June and Jonathan Pool. The impact of a legal revolution in rural Turkey. 8 Law and society review 533-560 (1974). LAW Per

Stirling, Paul. Land, marriage and the law in Turkish villages. 9 International social science bulletin 21-29 (1957). H1.A2

Tekinay, Selahattin S. Evlilik dışı nesep meselelerine toplu bir bakış. Ankara Üniversitesi Hukuk Fakültesi. In Medeni Kanunun 50. Yılı. Ankara, Sevinç Matbaası 83-96 (1977). LAW Tur 7 MEDE 1977

Timur, Hıfzı. Civil marriage in Turkey: difficulties, causes and remedies. 9 International social science bulletin 34-36 (1957). H1.A2